IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 266 OF 1998

Rekha Raghuvir Jambhekar. ... Applicant.

V/s.

1. Raghuvir Sadashiv Jambhekar

2. The State of Maharashtra. ... Respondents.

G.H.Hiranandani for the applicant.

A.S.Khandeparkar for respondent No.1.

Ms.M.H.Mhatre, APP for respondent No.2- State.

CORAM: V.C.DAGA, J.

DATED: 6th August 2007.

P.C.:

. Heard learned counsel for the applicant, learned counsel for respondent No.1 and learned A.P.P. For respondent No.2- State. The learned A.P.P. adopted arguments advanced on behalf of the applicant. Perused revision application.

2. The applicant has invoked revisional jurisdiction of this Court to challenge the order dated 9th March, 1998 passed in Criminal Revision Application No.38/1997 by the Additional Sessions Judge, Sindhudurg-Oros, whereby the revision application filed by the respondent- husband came to

be partly allowed and the order of maintenance granted by the Judicial Magistrate, First Class, Kudal ("J.M.F.C." for short) vide his order dated 20th September, 1997 passed in Criminal Misc. Application No.17/1996 came to be set aside.

The Facts :

3. The factual matrix reveals that applicant-wife moved an application under section 125 of Code of Criminal Procedure, 1973 (Cr.P.C.) before the Judicial Magistrate, First Class, Kudal to claim maintenance in the sum of Rs.500/- for herself and Rs.500/- for her daughter on the ground that respondent No.1- husband has practised cruelty on her and made her life miserable which, ultimately, compelled her to stay separately from her husband and his parents. The daughter of the present applicant Kumari Deepali (original applicant No.2) was aged about 2 years when the application was moved on 6th March, 1996.

4. The learned J.M.F.C. (trial Court), after recording evidence came to the conclusion that respondent No.1- husband deserted his wife, the applicant and neglected to maintain her along with minor daughter. The present applicant- wife has no sufficient means to maintain herself and her minor daughter. The trial Court, in the teeth of these findings, awarded maintenance @ Rs.200/- per month to

the present applicant (wife) and @ Rs.100/- per month to a minor daughter from the date of application i.e. 16th March, 1996 and further awarded Rs.100/- by way of costs.

5. Being aggrieved by the aforesaid judgment and order, revision was preferred by respondent No.1-husband before the Sessions Court, which was partly allowed by the Additional Sessions Judge, Sindhudurg-Oros by the impugned judgment and order holding that the applicant herself was not willing to live in the house of the husband, as such she was not entitled to claim maintenance. However, the order of maintenance granted in favour of minor daughter came to be confirmed.

6. The revisional court mainly relied on the letters alleged to have been written by the applicant-wife; wherein she has indicated that she was leaving matrimonial home because of the cruelty practised on her by her husband and his parents. Relying on these letters. learned Addl. Sessions Judge came to the conclusion that since the applicant- wife herself has left the matrimonial home she was not entitled to claim maintenance.

7. At this juncture, it will be relevant to note that from the said letters were also appreciated by the trial Court and after recording caveat that those letters were not proved in accordance with the provisions of the Evidence Act, trial Court came to the conclusion that those letters were written under coercion. The learned Sessions Judge, without recording his finding as to whether those letters were proved or not, chose to read those letters in the evidence and went on to record adverse finding against the applicant. That is how the right of the applicant to claim maintenance from respondent No.1- husband came to be denied. This adverse part of the order is a subject matter of challenge in this revision application.

Consideration :

8. Having heard rival parties, having seen the pleadings and findings recorded by both the courts below, I am of the considered view that the letters were not proved in accordance with the provisions of the Evidence Act, as such those letters cannot be read in evidence. Alternatively, assuming for the sake of arguments that those letters can be read in evidence, even then, those letters would not change the

complexion of the right of the applicant to claim maintenance. The contents of those letters and tenor thereof, unequivocally, go to show that those letters were written by the applicant- wife not out of her free will. Those letters appear to have been written under desperation. The letters clearly depict the severity of the act of cruelty practised on her. They exhibit picture as to how her life was made miserable in the matrimonial home by respondent No.1- husband and his parents. As a matter of fact, reading of those letters would justify her reason for not staying in the matrimonial home and to claim amount of maintenance. Learned Sessions Judge has failed to properly appreciate the evidence and has adopted perverse approach while rejecting maintenance to the applicant- wife. The impugned order is, thus, liable to be set aside.

9. It is needless to mention that the applicant-wife has made out her case under section 125 of Cr.P.C. As a matter of fact, she has proved that she is entitled to amount of maintenance which was awarded by the trial Court.

10. At this juncture, I may place it on record

that considering the value of money as on date, nobody can survive on such meagre amount of maintenance. However, since there is no prayer for enhancement of the amount of maintenance cannot be considered for enhancement. But this Court can certainly direct payment of arrears in toto within stipulated period with condition to pay interest on the amount of maintenance to which the applicant- wife is entitled to, if not paid within time-frame provided hereunder.

11. In the result, impugned order dated 9th March, 1998 passed by the Addl. Sessions Judge, Sindhudurg-Oros is set aside. Order of the trial Court dated 20th September, 1997 is restored. Respondent No.1- husband is directed to pay the amount of maintenance to the applicant- wife right from the date of application till today within one month from the date of this order, failing which, the amount of arrears shall carry further interest @ 18% per annum from the expiry of the period for payment stipulated herein. The costs of the proceedings are quantified in the sum of Rs.5,000/-.

12. Rule is made absolute in terms of this order.

JUDGE